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GOLDEN STAR & ORS v. LING PEEK HOE & ORS

FEDERAL COURT, PUTRAJAYA
ABDUL RAHMAN SEBLI FCJ
ZABARIAH MOHD YUSOF FCJ
HASNAH MOHAMMED HASHIM FCJ
B [CIVIL REVIEW NO: 02(f)-24-04-2016(A)]
11 JANUARY 2021

CIVIL PROCEDURE: *Committal proceedings – Application for – Failure by proposed contemnors to obey Federal Court Order – Proceeded to file second and third*
C *review applications after first review application struck out without liberty to file afresh – Whether blatant disregard of Federal Court Order – Whether all avenue of appeal exhausted – Whether non-compliance of court order showcased total disregard and disrespect – Whether conduct and behaviour of advocate and solicitor contumacious and disrespectful – Whether contempt of court established*

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The first applicant, the registered owner of a shophouse and two pieces of agricultural land ('properties'), obtained a bank loan which was secured by a charge of the properties and his house. The first applicant subsequently approached the first respondent's office, a licensed money lending company, for a loan, and furnished the original copy of the titles of the properties as
E security. The first applicant later discovered that the properties had been transferred to the second, third and fourth respondents, partners in the first respondent, and the documentations were all handled by one Ding Siew Ching ('DSC'), an advocate and solicitor. The second, third, fourth respondents and DSC are siblings. The applicants commenced a suit against
F the respondents, seeking a declaration that the sale and purchase agreements ('SPAs') and the transfer of the properties were null and void. The High Court granted the application and ordered the respondents to pay the applicants general, special, punitive and exemplary damages and dismissed the respondents' claim for injunction and damages for trespass. The High
G Court further ordered the respondents to do all that was necessary to discharge the lands and thereafter surrender the original issue document of titles to the first applicant within 60 days from the date of the order ('the HC Order'). Upon appeal by the respondents, the Court of Appeal reversed the decision of the High Court. However, the Court of Appeal decision was
H subsequently set aside by the Federal Court ('FC') and the HC Order was reinstated ('FC Order'). The respondents then filed an application to review the HC Order ('first review'). The first review was struck off by the FC when the respondents decided to withdraw the application. At the same time, the applicants filed committal proceedings against the second, third and fourth respondents at the Ipoh High Court for non-compliance of the FC Order
I which the Ipoh High Court allowed. After the first review was struck off by

the FC, Mohamed Hanif bin Khatri Abdulla ('HK') was appointed by the respondents to represent them. HK filed the second and third review applications against the FC Order and obtained a stay of execution of the Ipoh High Court Order pending the disposal of the review applications. Both the second and third review applications were struck off and the FC granted leave to the applicants to commence committal proceedings against HK and the respondents on the following grounds: (i) failed, ignored and refused to obey the FC Order; (ii) openly denied the validity and enforceability of the FC Order; (iii) falsely and without any basis accused the FC bias on the FC Order; and (iv) ignored the authority and bypassed the hierarchy of FC by applying for a stay of proceeding in the High Court pending disposal of the second and third reviews in the FC. Enclosure 52(a) was a notice of motion filed by HK to set aside para. 3 of the FC Order.

Held (finding respondents and HK guilty of contempt of court)
Per Hasnah Mohamed Hashim FCJ delivering the judgment of the court:

(1) Enclosure 52(a) was unanimously dismissed. Under O. 52 r. 2B of the Rules of Court 2012, the question whether the failure to comply with the rule on personal service is fatal or not depends on the facts of the case and whether it had prejudiced the proposed contemnor, in this case HK. The failure by the applicants to serve the notice personally on HK was neither fatal nor prejudicial to him. Whereas, in relation to the intitulement, there was no merit in the argument that the failure to cite the name of HK in the intitulement was fatal. With regard to the O. 52 statement, sufficient particulars of the alleged contempt by HK had been stated in the statement itself. (para 40)

(2) Under r. 137 of the Rules of the Federal Court 1995, the FC has the inherent power to review its own decision but this is exercised only in rare and exceptional circumstances. The effect of the striking out of the first review application meant that the decision of the High Court had been reinstated as ordered by this court, in that, the respondents must comply with the order granted by the High Court in favour of the applicants. Consequent upon the applicants' application for striking out, both the second and third review applications by HK were struck off without liberty to file afresh by this court. (paras 42, 45 & 46)

(3) The respondents blatantly disregarded the FC Order and proceeded to engage HK after the expiry of the prescribed 60 days and filed the applications for review of the FC Order as well as the application to stay the committal proceedings at the High Court. HK's arguments that the applicants' application for contempt was motivated by vengeance to retaliate against the respondents' applications for review was baseless. HK had, at all material times, acted on the instructions of the respondents when he filed the review applications and the stay. Despite

having exhausted all the avenues to appeal their case, the respondents were recalcitrant by insisting on litigating by filing the applications for review as well as for the stay. The non-compliance of a court order, and in this case, an injunction, was a serious matter and showcased total disregard and disrespect of the order granted by the FC which tantamount to clear contempt of this court's order. (paras 48, 49 & 60)

(4) When HK, an experienced advocate and solicitor with more than 20 years of litigation experience was engaged, the 60 days to comply as ordered by this court had expired. By accepting the brief, HK would have been aware at all material times of the FC Order and the terms of the mandatory injunction. Nevertheless, HK filed the second review application followed by the third review application as well as the stay of the committal in the High Court. HK's affidavits were devoid of any reason or explanation of whether he had advised his clients to comply with the FC Order and the reason for non-compliance and, despite his advice, they had instructed him to proceed with filing the review applications and the stay application. Such conduct and behaviour of the respondents and HK were contumacious and disrespectful. In the circumstances, contempt of court was proved beyond reasonable doubt against the respondents and HK. (paras 64, 66 & 70)

Bahasa Melayu *Headnotes*

Pemohon pertama, pemilik berdaftar sebuah rumah kedai dan dua bidang tanah pertanian ('hartanah'), memperoleh pinjaman bank yang dijamin dengan gadaian terhadap hartanah tersebut dan rumahnya. Pemohon pertama kemudian memohon pinjaman dari pejabat responden pertama, sebuah syarikat pinjaman wang berlesen, dan memberikan salinan asal hak milik hartanah-hartanahnya sebagai jaminan. Pemohon pertama kemudian mendapati bahawa hartanah-hartanahnya telah dipindah milik kepada responden kedua, ketiga dan keempat, rakan-rakan kongsi dalam responden pertama, dan kesemua dokumen diuruskan oleh satu Ding Siew Ching ('DSC'), seorang peguambela dan peguamcara. Responden kedua, ketiga, keempat dan DSC adalah adik beradik. Pemohon-pemohon memulakan guaman terhadap responden-responden memohon deklarasi bahawa perjanjian-perjanjian jual beli ('PJB') dan pindah milik hartanah-hartanah tersebut adalah terbatal dan tidak sah. Mahkamah Tinggi membenarkan permohonan tersebut dan memerintahkan responden-responden membayar balik kepada pemohon-pemohon, ganti rugi am, khas, punitif dan teladan dan menolak tuntutan responden-responden untuk injunksi dan ganti rugi untuk pencerobohan. Mahkamah Tinggi selanjutnya memerintahkan responden-responden membuat kesemua yang perlu untuk melepaskan gadaian tanah-tanah dan kemudian menyerahkan kembali hak milik asal kepada pemohon pertama dalam tempoh 60 hari dari tarikh perintah ('Perintah MT'). Atas

rayuan responden-responden, Mahkamah Rayuan mengakas keputusan Mahkamah Tinggi. Walau bagaimanapun, keputusan Mahkamah Rayuan diketepikan kemudiannya oleh Mahkamah Persekutuan ('MP') dan Perintah MT dikembalikan semula ('Perintah MP'). Selepas itu, responden-responden memfailkan permohonan untuk menyemak Perintah MT ('semakan pertama'). Semakan pertama dibatalkan oleh MP apabila responden-responden memutuskan untuk menarik balik permohonan itu. Pada masa yang sama, pemohon-pemohon memfailkan prosiding komital terhadap responden kedua, ketiga dan keempat di Mahkamah Tinggi Ipoh kerana ketidakpatuhan Perintah MP, yang dibenarkan oleh Mahkamah Tinggi Ipoh. Selepas pembatalan semakan pertama oleh MP, Mohamed Hanif bin Khatri Abdulla ('HK') dilantik responden-responden untuk mewakili mereka. HK memfailkan permohonan-permohonan semakan kedua dan ketiga terhadap Perintah MP dan memperoleh penangguhan pelaksanaan Perintah Mahkamah Tinggi Ipoh sementara menunggu pelupusan permohonan-permohonan semakan. Kedua-dua semakan kedua dan ketiga dibatalkan dan MP memberi kebenaran kepada pemohon-pemohon memulakan prosiding komital terhadap HK dan responden-responden atas alasan-alasan berikut: (i) gagal, tidak mengendahkan dan menafikan untuk mematuhi Perintah MP; (ii) secara terbuka menafikan kesahihan dan penguatkuasaan Perintah MP; (iii) secara salah dan tanpa asas menuduh MP berat sebelah terhadap Perintah MP; dan (iv) tidak mengendahkan kuasa dan memintas hierarki MP dengan memohon penangguhan pelaksanaan di Mahkamah Tinggi sementara menunggu pelupusan semakan-semakan kedua dan ketiga di MP. Lampiran 52(a) adalah notis usul yang difailkan oleh HK untuk mengetepikan perenggan 3 Perintah MP.

Diputuskan (mendapati responden-responden dan HK bersalah atas penghinaan mahkamah)

Oleh Hasnah Mohamed Hashim HMP menyampaikan penghakiman mahkamah:

(1) Lampiran 52(a) ditolak sebulat suara. Bawah A. 52 k. 2B Kaedah-kaedah Mahkamah 2012, soalan sama ada kegagalan mematuhi kaedah untuk penyerahan kediri adalah memudaratkan atau tidak bergantung pada fakta kes dan sama ada itu memprejudis penghina yang dicadangkan, dalam kes ini HK. Kegagalan pemohon-pemohon menyerahkan notis secara kediri tidak memudaratkan atau memprejudis terhadapnya. Manakala, berkaitan dengan tajuk, tiada merit dalam hujahan bahawa kegagalan menyatakan nama HK dalam tajuk adalah memudaratkan. Berkaitan dengan kenyataan A. 52, butir-butir mencukupi tentang penghinaan yang didakwa terhadap HK telah dinyatakan dalam kenyataan itu sendiri.

A **(2)** Bawah k. 137 Kaedah-kaedah Mahkamah Persekutuan 1995, MP mempunyai kuasa sedia ada untuk menyemak keputusannya sendiri tetapi ini dilaksanakan hanya dalam hal keadaan yang jarang berlaku dan luar biasa. Kesan pembatalan permohonan semakan pertama bermaksud bahawa keputusan Mahkamah Tinggi telah dikembalikan semula seperti
B yang diperintahkan oleh mahkamah ini, iaitu, responden-responden perlu mematuhi perintah yang diberi Mahkamah Tinggi berpihak pada pemohon-pemohon. Berikutan permohonan pemohon-pemohon untuk pembatalan, kedua-dua semakan kedua dan ketiga oleh HK dibatalkan tanpa kebebasan memfailkan semula oleh mahkamah ini.

C **(3)** Responden-responden jelas tidak mengendahkan Perintah MP dan meneruskan untuk melantik HK selepas tempoh 60 hari yang diberi luput, dan memfailkan permohonan untuk menyemak Perintah MP dan juga permohonan penangguhan prosiding di Mahkamah Tinggi. Hujahan HK bahawa permohonan untuk penghinaan oleh pemohon-pemohon
D didorong oleh dendam untuk membalas permohonan responden-responden untuk semakan, tidak berasas. HK telah, pada setiap masa material, bertindak atas arahan responden-responden apabila memfailkan pemohonan-permohonan semakan dan penangguhan. Walaupun telah menggunakan kesemua cara rayuan dalam kes mereka,
E responden-responden masih berkeras dengan menekankan untuk melitigasi dengan memfailkan permohonan-permohonan semakan serta penangguhan. Ketidakpatuhan perintah mahkamah, dalam kes ini injunksi, adalah perkara serius dan menunjukkan perintah MP tidak diendahkan dan tidak dihormati yang membawa maksud penghinaan jelas perintah mahkamah.

F **(4)** Apabila HK, seorang peguambela dan peguamcara yang berpengalaman lebih 20 tahun dalam litigasi dilantik, tempoh 60 hari untuk pematuhan yang diperintahkan mahkamah ini telah pun luput. Dengan menerima kes itu, HK sepatutnya mengetahui pada kesemua masa material tentang
G Perintah MP dan terma-terma mandatori injunksi. Walau bagaimanapun, HK memfailkan permohonan semakan kedua diikuti semakan ketiga di Mahkamah Tinggi. Afidavit-afidavit HK tiada alasan atau penjelasan sama ada dia telah menasihati anak guamnya untuk mematuhi Perintah MP dan alasan untuk ketidakpatuhan, dan walaupun diberi nasihat, mereka menasihatinya untuk meneruskan pemfailan
H permohonan-permohonan semakan dan penangguhan tersebut. Tindakan dan kelakuan responden-responden dan HK yang sebegitu adalah tegar dan tanpa hormat. Dalam keadaan tersebut, penghinaan mahkamah dibuktikan melampaui keraguan munasabah terhadap responden-responden dan HK.

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Case(s) referred to:

Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 6 CLJ 1 FC ***(refd)***

Badan Peguam Malaysia v. Kerajaan Malaysia [2009] 1 CLJ 833 FC ***(refd)***

Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors [1995] 2 CLJ 900 CA ***(refd)***

Hup Soon Omnibus Co Sdn Bhd & Anor v. Lim Chee [2018] 1 CLJ 641 CA ***(refd)***

MBf Holdings Bhd & Anor v. Houng Hai Kong & Ors [1994] 4 CLJ 1002 HC ***(refd)***

Parashuram Detaram Shamdasani v. King-Emperor [1945] AC 264 ***(refd)***

PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener) [2019] 6 CLJ 1 FC ***(refd)***

Peguam Negara Malaysia v. Mkini Dotcom Sdn Bhd & Anor [2020] 7 CLJ 173 FC ***(refd)***

Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd [2015] 7 CLJ 584 FC ***(refd)***

Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***

Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram [1998] 4 CLJ 883 CA ***(refd)***

TO Thomas v. Asia Fishing Industry Pte Ltd [1977] 1 LNS 126 FC ***(refd)***

Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(refd)***

Legislation referred to:

Legal Profession Act 1976, s. 35(1)
Rules of Court 2012, O. 52 r. 2B
Rules of the Federal Court 1995, r. 137

For the applicants - Hong Chong Hang & Edmund Lim; M/s Hong Chew King & Co
For the respondents - Chieng Lee Karn; M/s Chieng and Lum and Assocs
For Haniff Khatri - Mohamed Haniff Khatri Abdulla, Mohamad Reza Abu Hassan, Mohd Irzan Iswatt Mohd Noor & Mohamad Farhan Kamarudin; M/s Haniff Khatri

Reported by S Barathi

JUDGMENT

Hasnah Mohammed Hashim FCJ:

Introduction

[1] There are two committal proceedings commenced, one initiated at the Ipoh High Court and the other, before this court. The parties will be referred to as in the committal proceeding before the Federal Court.

[2] Enclosure 38(a) is the committal proceeding before this court:

> (1) Ding Toh Biew (No. K/P: 710206-08-6281), Ding Toh Gien (No. K/P: 680918-08-5573) dan Ding Toh Lei (No. K/P:631002-08-6225), Pemohon-Pemohon Ke-2, Ke-3 dan Ke-4 yang dinamakan di atas untuk tunjuk sebab mengapa mereka tidak harus dikomitkan ke penjara kerana menghina Perintah Mahkamah Persekutuan bertarikh 20.6.2017;

(2) Golden Star (No. Pendaftaran Perniagaan 5196380), Ding Toh Biew (No. K/P: 710206-08-6281), Ding Toh Gien (No. K/P: 680918-08-5573) dan Ding Toh Lei (No. K/P:631002-08-6225), Pemohon Pertama, Ke-2, Ke-3 dan Ke-4 yang dinamakan di atas untuk tunjuk sebab mengapa mereka tidak harus dikomitkan ke penjara kerana memalukan Hakim-Hakim Mahkamah Persekutuan yang mendengar dan memutuskan Perintah Mahkamah Persekutuan bertarikh 20.6.2017 dan melemahkan pentadbiran keadilan dan keyakinan awam terhadap badan Kehakiman;

(3) Mohamed Haniff B Khatri Abdulla, seorang peguambela dan peguamcara yang mengamal di bawah nama dan gaya Tetuan Haniff Kathri, peguam mewakili Pemohon-Pemohon yang dinamakan di atas untuk tunjuk sebab mengapa beliau tidak harus dikomitkan ke penjara kerana membantu dan bersuhabat dengan Pemohon-Pemohon untuk mengekalkan pelanggaran dan ketidakpatuhan Perintah Mahkamah Persekutuan bertarikh 20.6.2017, memalukan Hakim-Hakim Mahkamah Persekutuan yang mendengar dan memutuskan Perintah Mahkamah Persekutuan bertarikh 20.6.2017 dan melemahkan pentadbiran keadilan dan keyakinan awam terhadap Badan Kehakiman; dan

(4) Kos permohonan dibayar oleh Pemohon-Pemohon yang dinamakan di atas dan Mohamed Haniff B Khatri Abdulla kepada Ling Peek Hoe dan Ling Boon Huat/Responden-Responden.

[3] Enclosure 52(a) is the notice of motion filed by Mohamed Haniff bin Khatri Abdulla ("HK") to set aside para. 3 of the Federal Court order dated 27 May 2019:

(1) Bahawa berdasarkan Kaedah 137, Kaedah-Kaedah Mahkamah Persekutuan 1995 dan/atau bidang kuasa sedia ada Mahkamah, perenggan (3) Perintah *Ex-Parte* Mahkamah Persekutuan bertarikh 27.5.2019 yang memberikan kebenaran kepada Responden-responden yang dinamakan di atas untuk memohon supaya Mohamed Haniff bin Khatri Abdulla seorang peguambela dan peguamcara yang mengamal di bawah nama dan gaya Tetuan Haniff Khatri, peguam mewakili Pemohon-Pemohon yang dinamakan di atas, untuk tunjuk sebab mengapa beliau tidak harus dikomitkan ke penjara kerana membantu dan bersubahat dengan Pemohon-Pemohon untuk mengekalkan perlanggaran dan ketidakpatuhan Perintah Mahkamah Persekutuan bertarikh 20.6.2017, memalukan Hakim-Hakim Mahkamah Persekutuan yang mendengar dan memutuskan perintah Mahkamah Persekutuan bertarikh 20.6.2017 dan melemahkan pentadbiran keadilan dan keyakinan awam terhadap Badan Kehakiman, adalah diketepikan;

(2) Bahawa berdasarkan Kaedah 137, Kaedah-Kaedah Mahkamah Persekutuan 1995 dan/atau bidang kuasa sedia ada Mahkamah, prosiding pengkomitan melalui Notis Usul bertarikh 29.5.2019 terhadap Pemohon-Pemohon dan Mohamed Haniff bin Khatri

Abdulla di Mahkamah Persekutuan, termasuk namun tidak terhad kepada pemfailan Afidavit Jawapan oleh Mohamed Haniff bin Khatri Abdulla terhadap prosiding pengkomitan tersebut, adalah digantung sehingga pelupusan permohonan Mohamed Haniff bin Khatri Abdulla di perenggan (1) di atas;

(3) Kos bagi permohonan ini hendaklah dibayar oleh Responden-Responden yang dinamakan di atas kepada Mohamed Haniff bin Khatri Abdulla dengan serta-merta.

[4] Ling Peek Hoe and Ling Boon Huat are the first and second applicants ("the applicants") in this committal proceeding. The second applicant is the son of the first applicant. Golden Star, Ding Toh Biew, Ding Toh Gien and Ding Toh Lei are the first, second, third, and fourth respondents ("the respondents"). Mohamed Hanif bin Khatri Abdulla ("HK"), an advocate and solicitor practising under the name and style of Messrs Haniff Khatri was cited by the applicants for aiding and abetting the respondents' non-compliance of the court order. The leave to commence committal proceedings was granted by this court on 27 May 2019.

The Facts

[5] The first applicant is the registered owner of a shophouse described as No. 59, Taman Ilmu Setiawan, Setiawan, Perak ("No. 59 shophouse") and two pieces of agricultural land located at Kg Selamat ("Kg Selamat properties"). These properties will collectively be referred to as "the properties". Ding Siew Ching ("DSC") is an advocate and solicitor practising in Messrs. Ding & Co in Setiawan, Perak. The first respondent is a licensed moneylending company while the second, third and fourth respondents are partners of the first respondent. DSC, the second, third and fourth respondents are siblings.

[6] The facts that led to the dispute between the parties began in 1995 when the first applicant obtained a loan facility of RM590,000 from Hong Leong Bank Bhd ("HLBB"). The properties and his house at No. 27, Jalan Raja Omar ("Jalan Raja Omar property") were charged as securities for the loan.

[7] Sometime in mid-1996, the first applicant approached the first respondent's office for a loan through the second respondent. For the purpose of the loan, the first applicant was asked to furnish the original copy of the titles of the properties and was informed that the first respondent had the right to keep the original titles until the first applicant fully paid the loans.

[8] For the purpose of the loan, the first applicant signed certain documents and paid the sum of RM150 as legal fees. It was represented to the first applicant by the second respondent that the documents that he had signed as well as the legal fees paid were for the loan procured from the first respondent. A cheque of RM5,000 was issued by the second respondent to

A the first applicant with the agreed interest on the loan of 4% per month. The first applicant further took a few more loans from the first respondent totalling RM500,000.

[9] Unfortunately, the first applicant was in arrears of the HLBB loan payment. To resolve the outstanding sum due to HLBB, the first applicant
B sold the Jalan Raja Omar property sometime at the end of 1996. HLBB received RM330,000 as part payment of the first applicant's loan with HLBB.

[10] The respondents settled the first applicant's HLBB loan and discharged the charges on the properties.
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[11] In 2003, the first applicant discovered that the properties had been transferred to the second, third and fourth respondents by virtue of sale and purchase agreements ("SPAs"). All the loans and transfers documentation were handled by DSC.

D **[12]** In the same year, the first applicant took a loan from another bank to repurchase No. 59 shophouse for RM330,000 where the first applicant and his family lived. The No. 59 shophouse was then transferred to the second applicant. As in the previous transaction, all the documentations relating to the transfer were handled by DSC.

E **The High Court**

[13] On 18 August 2006, the applicants filed a suit in the Ipoh High Court against DSC and the respondents seeking a declaration that the SPAs and the transfer of the properties were null and void. The essence of the applicants'
F claim was based on misrepresentation, fraud or conspiracy to defraud.

[14] In respect of DSC, the applicants alleged that as an advocate and solicitor, she failed to exercise all reasonable professional care, skill and diligence and had breached the terms of her retainer with the applicants, in particular:

G (i) failed to properly advise the applicants on the purported SPAs for the properties from the first applicant to the second, third and fourth respondents; and

(ii) failed to advise the applicants that the purported transactions and redemption of the No. 59 shophouse was in contravention of the
H Moneylenders Act 1951 ('the MLA 1951').

[15] The respondents also filed a suit in the Ipoh High Court against the applicants seeking an injunction and damages for trespass. Both suits by order of the High Court were consolidated on 24 February 2010.

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[16] On 28 November 2012 after a full trial, the High Court declared that the SPAs entered between the first applicant with the second, third and fourth respondents and the transfers of the properties were null and void. The High Court ordered the respondents to pay the applicants general, special, punitive and exemplary damages. The respondents' claim was dismissed with costs.

[17] Subsequently on 17 April 2013, the High Court further ordered the respondents to do all that is necessary to discharge the lands and thereafter surrender the original issue document of titles to the first applicant within 60 days from the date of the order ("the High Court order").

[18] Aggrieved by the decision of the High Court, the respondents appealed to the Court of Appeal.

The Court of Appeal (COA)

[19] The COA found that the learned JC erred in applying the wrong standard of proof in holding that the applicants had proven their case against the respondents for fraudulent misrepresentation and fraud in respect of the three properties. The learned JC ought to have used the beyond reasonable doubt test. The applicants failed to prove fraudulent misrepresentation and fraud beyond reasonable doubt.

[20] The COA allowed the three appeals by the respondents with costs and set aside the High Court order.

The Federal Court

[21] Dissatisfied with the decision made by Court of Appeal, on 10 April 2015 the applicants filed a motion for leave to appeal.

[22] On 28 March 2016, the Federal Court allowed the leave to appeal and the following questions of law:

Question 1

Whether in light of the recent Federal Court of Malaysia's decision in *Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd* [2015] 7 CLJ 584, the Court of Appeal was right in adopting beyond reasonable doubt as the standard of proof for civil claim?

Question 2

Whether irresistible conclusion is not the same with beyond reasonable doubt?

[23] On 20 June 2017, the appeal was heard in the Federal Court. In respect of question 1, the Federal Court held that the court could not subscribe to the argument that, "future cases" meant only cases that were yet

A to be filed with the courts. The law as declared by the Federal Court in *Sinnaiyah* (*supra*) and made subject to the doctrine of prospective overruling, applied to all pending cases and all those cases that were still under appeals within the court system. For that reason, it was wrong of the COA to have adopted the "beyond reasonable doubt" as the standard of proof in the instant
B case.

[24] In respect of question 2, the Federal Court was of the view that the "irresistible conclusion test" was the same as "the beyond reasonable doubt test".

C **[25]** The Federal Court unanimously allowed the applicants' appeal, set aside the COA order and reinstated the High Court order requiring the second to fourth respondents to cause the charge created by them on the first applicant's properties to be discharged and to return the original title deeds to the first applicant within 60 days of the FC order.

D **The Review Applications And Committal Proceedings**

[26] Dissatisfied with the Federal Court's decision, on 28 February 2018, the respondents filed a motion to review the Federal Court order *vide* Federal Court Civil Application No. 02(f)-24-04-2016(A) ('the first review').

E **[27]** At the same time on 16 April 2018, the applicants filed a committal proceeding against the second, third and fourth respondents in the Ipoh High Court for non-compliance of the FC order.

[28] The Ipoh High Court allowed the *ex parte* order dated 18 May 2018 for the applicants to cite the second, third and fourth respondents for
F contempt.

[29] During the hearing of the first review before the Federal Court on 15 August 2018, the respondents' counsel applied for an adjournment which was not allowed by the Federal Court. The respondents' counsel then decided to withdraw the first review and accordingly it was struck off by the
G Federal Court.

[30] After the first review was struck off by the Federal Court on 24 September 2018, HK was appointed by the respondents to represent them. It is contended by the respondents that they were unaware of the withdrawal of the first review by their counsel and that it was made without their
H instructions.

[31] On 23 October 2018 HK filed another review application against the Federal Court order that is, Civil Review No. 08(R)-8-10-2018(W) ('the second review). This was followed by an application for stay of proceeding (inclusive but not limited to committal proceeding against the respondents)
I filed on 25 October 2018 in the Ipoh High Court pending disposal of second review.

[32] On 8 November 2018 HK filed another review application against Federal Court order *vide* Civil Review No. 08(RS)-15-11-2018(W) ('the third review'). A

[33] On 6 December 2018 HK obtain a stay of execution at the Ipoh High Court pending disposal of the review applications.

B

[34] Both the second review and the third review were struck off on 27 May 2019. The Federal Court granted leave to the applicants to commence committal proceeding against HK and the respondents on following grounds:

(i) Failed, ignored and refused to obey the Federal Court's order; C

(ii) Openly denied the "kesahihan & penguatkuasaan" (validity & enforceability) of the Federal Court's order;

(iii) Falsely and without any basis accused the Federal Court "berat sebelah" (bias) on the Federal Court's order; and D

(iv) Ignored the authority and bypass the hierarchy of Federal Court by applying for a stay of proceeding in the High Court pending disposal of the second and third review in the Federal Court.

[35] HK filed a notice of motion on 29 May 2019 to set aside para. 3 of the Federal Court order dated 27 May 2019. The applicants on the other hand filed a notice of motion for committal proceedings (encl. 38(a)). Due to conflict of interest, HK discharged himself from representing the respondents. This court heard both encls. 52(a) and 38(a) together. E

The Arguments F

[36] Before us, learned counsel for the applicants argued that the respondents not only failed but blatantly ignored and refused to obey the Federal Court order within the prescribed 60 days as expressly stated in the said order. Learned counsel submitted that the respondents were aware of the mandatory injunction and the Federal Court order which had affirmed the High Court order. The respondents through an affidavit filed to oppose the committal proceedings denied the validity and enforceability of the order of the Federal Court. It was further argued that the respondents' allegation of bias is without any merit and basis. Such allegation casts aspersion on the integrity and impartiality of the Federal Court Judges who had heard the appeal. G H

[37] It was further submitted by learned counsel for the applicants that by applying for a stay of proceedings in the Ipoh High Court pending disposal of the second and third reviews in the Federal Court, the respondents had bypassed the hierarchy of the courts. The respondents did not apply for a stay I

A at the Federal Court but had instead filed the stay application at the Ipoh High Court. HK was cited as a contemnor as he acted as counsel for the respondents had according to the applicants orchestrated, aided and abetted the respondents to disobey the Federal Court order.

B **[38]** In response, learned counsel for the respondents submitted that they had just followed the advice of HK because they are laymen and thus do not possess any knowledge of the law and the rules of court. Therefore, they had no other option but to rely on the professional advice given by HK as their lawyer.

C **[39]** HK on the other hand, argued that the applicants failed to prove beyond reasonable doubt that he is in contempt as the matter complained of by the applicants does not amount to interfering with the due administration of justice but was made in good faith in exercising the respondents' legal rights. He had acted in accordance with the respondents' instructions and the applicants failed to prove that it was HK who had advised the respondents D to disobey the Federal Court order. In support of his submission, learned counsel argued that as an advocate and solicitor, he is protected by the provisions of the LPA, that is, to act without fear or favour. Furthermore, it is against public policy for advocates and solicitors to be held liable for contempt in the course of exercising their duty as the filing of the second and E third review applications and the stay proceedings are within the ambit of the law and does not tantamount to an act of contempt.

Analysis And Decision

Enclosure 52(a)

F **[40]** Enclosure 52(a) is unanimously dismissed by this court. Our reasons are as follows. Firstly, on the issue of personal service, under O. 52 r. 2B of the Rules of Court 2012, the question whether the failure to comply with the rule is fatal or not depends on the fact of the case and whether it has prejudice the proposed contemnor in this case HK. This court in *Peguam* G *Negara Malaysia v. Mkini Dotcom Sdn Bhd & Anor* [2020] 7 CLJ 173 held that non-compliance with the requirement of notice pursuant to O. 52 r. 2B is not fatal or prejudicial. On the facts of the case before us, we are of the view that the failure by the applicants to serve the notice personally on HK is neither fatal nor prejudicial to him. On the issue in relation to intitulement, we do H not find any merit in the argument that the failure to cite the name of HK in the intitulement is fatal. With regard to the O. 52 statement, we find that sufficient particulars of the alleged contempt by HK have in fact been stated in the statement itself.

I

Review Application

[41] The issue before us is the contempt by the respondents and their former lawyer, HK. However, we feel that is necessary to discuss the review application which is the basis of the complaints by the applicants in this committal proceedings. Rule 137 of the Rules of the Federal Court 1995 (RFC) provides:

> For the removal of doubts it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to hear any application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[42] Under r. 137 RFC the Federal Court has the inherent power to review its own decision but this is exercised only in rare and exceptional circumstances. Abdul Hamid CJ in *Asean Security Paper Mills Sdn. Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1; [2008] MLJU 251 in his usual eloquent manner explained the invocation of the rule:

> In an application for a review by this court of its own decision, the court must be satisfied that it is a case that falls within the limited grounds and very exceptional circumstance in which a review may be made. Only if it does, that the court reviews its own earlier judgment. Under no circumstances should the court position itself as if it were hearing an appeal and decide the case as such. In other words, it is not for the court to consider whether this court had or had not made a correct decision on the facts. That is a matter of opinion. Even on the issue of law, it is not for this court to determine whether this court had earlier, in the same case, interpreted or applied the law correctly or not. That too is a matter of opinion. An occasion that I can think of where this court may review its own judgment in the same case on question of law is where the court had applied a statutory provision that has been repealed. I do not think that review power should be exercised even where the earlier panel had followed certain judgments and not the others or had overlooked the others. Not even where the earlier panel had disagreed with the court's earlier judgments. If a party is dissatisfied with a judgment of this court that does not follow the court's own earlier judgments, the matter may be taken up in another appeal in a similar case. That is what is usually called "revisiting". Certainly, it should not be taken up in the same case by way of a review. That had been the practice of this court all these years and it should remain so. Otherwise, there will be no end to litigation. A review may lead to another review and a further review. This court has so many time warned against such attempts.

[43] In order to succeed in a review application made pursuant to r. 137 RFC it must be shown that not only does the case fall within the stringent criteria as set out in *Asean Security Mills* (*supra*) but the error must be so obvious that there was injustice to the party. Zaki Tun Azmi CJ succinctly explained in his judgment in *Badan Peguam Malaysia v. Kerajaan Malaysia* [2009] 1 CLJ 833; [2009] 2 MLJ 161:

A Before the application can succeed, he must be able to show on the face of the record that there was injustice. That error must be obvious on the face of the record. It should be able to be seen just by reading the record that there was an error which obviously was an injustice. In *Asean Security Papermills* case, I have listed out the circumstances where discretion under r. 137 can be exercised. If one were to go through all these cases, injustice
B could be clearly seen even before going into the merits of each case. It cannot apply where a decision of this court is only questioned, whether in law or on the facts of the case. This principle is well spelt out in the case cited below.

[13] In *Chan Yock Cher @ Chan Yock Kher v. Chan Teong Peng* [2005] 4 CLJ
C 29 at p 45, Abdul Hamid Mohamad FCJ (as he then was) said this:

… It has been seen that the applicant questions the findings of this court both in law and on facts. These are matters of opinion. Just because we may disagree (we do not say whether we agree or disagree with such findings) with the earlier panel of this court that is not a ground that
D warrants us to review the decision. Similarly, regarding the interpretation and application of some provisions of the Companies Act 1965, even if we disagree with the earlier panel (again we do not say whether we agree or disagree) that does not warrant us to set aside the judgment and the [2009] 2 MLJ 161 at 172order of the earlier panel of this court and re-hear and review the appeal. Otherwise, as has been said, there would be no
E end to a proceeding.

[44] In the instant case before us, this court had unanimously allowed the applicants' appeal, set aside the Court of Appeal order and reinstated the High Court order. The respondents then filed an application to review the Federal Court decision. The first review was struck off by this court on
F 15 August 2018 when the respondents' counsel decided to withdraw application. This was then followed by the second and third review applications.

[45] The effect of the striking out of the first review would necessarily mean that the decision of the High Court had been reinstated as ordered by
G this court. In other words, the respondents must comply with the order granted by the High Court in favour of the applicants. Due to the non-compliance of the Federal Court order, the applicants filed a committal proceeding against the respondents. However, the respondents filed an application to stay the execution of the order pending the review
H applications.

[46] HK filed the second review but the application was technically flawed as it was filed under the wrong administrative code. Subsequently, another review application was filed, the third review. The applicants on the other hand, filed an application to strike out both the second and third review
I applications and on 27 May 2019 both applications were struck off without liberty to file afresh by this court.

The Committal Proceeding

[47] There are two orders pertaining to this case. The High Court order dated 17 April 2013 granted a mandatory injunction compelling the respondents to surrender the titles within 60 days from the date of the order. The 60 days to comply lapsed on 17 June 2013. The FC Order dated 20 June 2017 affirmed the High Court order, granting the mandatory injunction. The 60 days to comply lapsed on 20 August 2017.

[48] The respondents' previous solicitors, Messrs. Yunus Ali & Kam had advised them to comply with the FC order despite the filing of a review against it. Learned counsel for the respondents argued that being laymen they had followed the advice of their lawyer. However, the respondents blatantly disregarded the Federal Court order and proceeded to engage HK after the expiry of the prescribed 60 days. It is contended by learned counsel for the applicants that the respondents did the following:

(i) affirmed an affidavit denying the validity and enforceability of the Federal Court order; and

(ii) relied on the said affidavit to oppose the committal proceeding against them for noncompliance of the mandatory injunction in the High Court.

[49] HK was then engaged by the respondents after the 60 days lapsed on 24 September 2018. Despite the lapse of the 60 days, the applications for review of the Federal Court order were filed. The application to stay the committal proceeding at the High Court was filed by the respondents. When the application for leave to commence committal proceeding was granted by the Federal Court, the respondents decided to dissociate themselves from HK for the advice given. *Ex abudandi cautela*, they filed a complaint with the Bar as well as a statutory declaration to show that they were serious about HK giving "incompetent and/or wrong advice" to them (See: para 6.3 affidavit Ding Toh Lei affirmed on 15 August 2019).

[50] HK in his affidavit justified his reasons for filing the applications:

(i) he was acting on the instructions of his clients and therefore protected under the LPA;

(ii) the applications for review no. 2 and no. 3 were filed on the instructions of his clients; and

(iii) the application for stay of execution in the High Court was filed on the instructions of his clients.

[51] HK further argued in response that the filing of the committal proceedings in this court had in fact ousted the alleged contemnors' right of appeal as the alleged act of contempt was at the High Court not at the Federal Court. The failure by the applicants to initiate the committal proceeding against HK at the High Court and Court of Appeal stage shows that the applicants were in doubt as to whether there was any act of contempt committed by HK. As such, the applicants are estopped from proceeding with committal proceeding against HK as they themselves were in doubt as to whether they have a *prima facie* case of contempt against HK.

[52] The respondents had merely exercised their legal right in filing the appeals against the High Court decision and review against the Federal Court decision. HK further submitted that there is no *prima facie* act of contempt or the charge had not been proved beyond reasonable doubt because the matter complained of does not amount to and/or calculated as interfering with the due administration of justice but was made in good faith in the exercise of the respondents' legal rights.

[53] It was further argued that the filing of the second and third review applications before Federal Court and the stay proceeding application before the High Court were *bona fide* and under instruction by the respondents and not to defeat the administration of justice.

[54] In the review applications, the respondents raised bias as a ground to challenge the Federal Court order. Learned counsel for the applicants argued that this cast aspersion on the integrity and dignity of the Federal Court Judges who had heard the appeal. Learned counsel for the applicants in his submission cited the case of *Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors* [1995] 2 CLJ 900 where Gopal Sri Ram, Judge of the Court of Appeal (as he then was) said that allegation of bias is a serious allegation that may lead to erosion of public confidence in the Judiciary:

> Nothing is capable of eroding public confidence in the judicial arm of the State than unwarranted and unfounded allegations of bias. It is therefore to be avoided at all costs, if necessary, by having resort to the power to punish for contempt.

[55] In response to the submission of learned counsel for the applicants, HK argued that he was merely acting on instructions and is protected from contempt by virtue of s. 35(1) of the LPA which reads:

> (1) Any advocate and solicitor shall, subject to this Act and any other written law, have the exclusive right to appear and plead in all Courts of Justice in Malaysia according to the law in force in those Courts; and as between themselves shall have the same rights and privileges without differentiation.

[56] Learned counsel, HK further submitted that by virtue of the provision of s. 35(1) LPA, advocates and solicitors are protected from contempt proceeding in order to be able to act without fear or favour. The said provision states that, subject to the provisions of the LPA and any other written law, advocates and solicitors shall have the exclusive right to appear and plead in all courts in Malaysia according to the applicable law and shall have the same rights and privileges.

[57] The principles of law pertaining to contempt of court is explained through the judgment of Abdul Hamid Omar (LP) in the Supreme Court decision of *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210 at p. 212:

> Obedience to court order
>
> It is established law that a person against whom an order of court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of court runs the risk of being held in contempt with all its attendant consequences.

[58] Arifin Zakaria CJ in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849 (FC) said:

> [26] Contempt has been reclassified either as (1) a specific conduct of contempt for breach of a particular court order; or (2) a more general conduct for interfering with the due administration or the course of justice. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v. Newspaper Publishing Plc*, (*supra*) at p. 362:
>
> Of greater assistance is the reclassification as (a) conduct which involves a breach, or assisting in the breach, of a court order; and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such inference being a characteristic common to all contempt per Lord Diplock in *Attorney-General v. Leveller Magazine Ltd* [1979] AC 440 at 449.
>
> [27] This reclassification was adopted by the Court of Appeal in *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 CLJ 549.
>
> [28] Hence, the law of contempt is wide enough to cover not only those who are bound by the court order, but other parties who assist the disobedience to the court order. It was reported in *Attorney-General v. Times Newspapers Ltd* [1991] 2 All ER 398 that a person, who knowingly impeded or interfered with the administration of justice in an action between two other parties, was guilty of contempt of court notwithstanding that he was neither named in any order of the court nor had assisted a person against whom an order was made.

[59] The Federal Court in *PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener)* [2019] 6 CLJ 1 held:

> [41] The courts of justice are the bulwark of a nation. Alexander Hamilton famously recognised, in the doctrine of the separation of powers, that the Legislature controls money, the executive controls force and the Judiciary controls nothing. It is on public confidence that the Judiciary depends, for the general acceptance of its judicial decisions, by both citizens and the Government. The public conforms to the decisions of the Judiciary, because they respect the concept of judicial power and the judges who exercise such power.[1]
>
> [42] Therefore, the trust and confidence of the people in the judicial system to deliver impartial justice comprises the very foundation of the Judiciary.
>
> [43] The concept of contempt of court is essential to protect public confidence in the Judiciary and the administration of justice. The rationale behind the concept has been stated in the English *locus classicus* on this subject, namely the *Attorney General v. Times Newspaper Ltd* [1973] 3 All ER 54 by Lord Morris and followed by Steve Shim CJ (Sabah and Sarawak) in the case of *Zainur Zakaria v. PP* [2001] 3 CLJ 673; [2001] 3 MLJ 604:
>
> ... For a better perspective of this concept, I can do no better than refer to the illuminating speeches made by a strong panel of Law Lords in *Attorney General v. Times Newspaper Ltd* [1973] 3 All ER 54 (universally known as "the thalidomide case"). Therein, Lord Morris has said as follows:
>
> ... the phrase 'contempt of court' is one which is compendious to include not only disobedience to orders of a court but also certain types of behaviour or varieties of publications in reference to proceedings before courts of law which overstep the bounds which liberty permits. In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted that their authority wanes and is supplanted. But as the purpose and existence of the courts of law is to preserve freedom within the law for all well-disposed members of the community, it is manifest that the courts must never impose any limitations on free speech or free discussion or free criticism beyond those which are absolutely necessary. When therefore a court has to consider the propriety of some conduct or speech or writing decision will often depend on whether one aspect of the public interest definitely outweighs another aspect of the public interest.

> Certain aspects of the public interest will be relevant in deciding or assessing whether there has been contempt of court. But this does not mean that if some conduct ought to be stigmatised as being contempt of court it could receive absolution and be regarded as legitimate because it had been inspired by a desire to bring about a relief of some distress that was a matter of public sympathy and concern. There can be no such thing as a justifiable contempt of court.
>
> These are words of unparalleled wisdom which should be engraved in tablets of stone.

[60] HK's arguments that the applicants' application for contempt is motivated by vengeance to retaliate against the respondents' applications for review is baseless. HK had at all material times acted on the instructions of the respondents when he filed the review applications and the stay.

[61] In *T.O Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 LNS 126; [1977] 1 MLJ 152, it was held by this court that "An order even irregularly obtained cannot be treated as a nullity, but must be implicitly obeyed, until by proper application it is discharged". Lee Hun Hoe (Borneo) CJ in *T.O Thomas* (*supra*) explicitly emphasised that contempt of court arises when there is wilful disobedience of an injunction:

> When an injunction has been made against a person appellant cannot aid and abet that person to flout it for that will be in contempt. That person can appear in court and contest the injunction by asking the court to vacate it. Contempt of court arises on the wilful disobedience of the injunction whether it is made with or without jurisdiction. The question whether "the court order" has been suspended or modified is a matter for the court to decide when its properly before the court. This is not a matter for appellant to arbitrarily so construe. Where a plaintiff has proved his right to an injunction against a nuisance or other injury, it is no part of the duty of the court to inquire in what way the defendant can best remove it. See *Attorney General v. Colney Hatch Lunatic Asylum* [1869] 4 Ch. app 146. "The court order" has never been discharged. There is no question of the undertaking suspending "the court order". An order even irregularly obtained cannot be treated as a nullity, but must be implicitly obeyed, until by proper application it is discharged. This view is supported by authority. In dealing with the contention that the original order had been erroneously granted in *Fennings v. Humphrey* [1841] 4 Beav 1; 49 ER 237. Lord Langdale MR said:
>
> > It is clear, that a party who is served with an order may be guilty of contempt for disobedience, in a case in which the order ought not to have been made. He is not to determine for himself, but ought to come to the court for relief, if advised that the order is invalid.

A

> Nothing is more incumbent upon the courts than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence than to prejudice the minds of the public against the courts.

[62] The Court of Appeal in *Thiruchelvasegaram Manickavasegar v. Mahadevi*
B *Nadchatiram* [1998] 4 CLJ 883, observed that a party could not ignore or refuse to comply with a court order on the ground of nullity. In another case *Hup Soon Omnibus Co Sdn Bhd & Anor v. Lim Chee* [2018] 1 CLJ 641 the Court of Appeal emphasised the importance of a court order that it must be obeyed as ordered unless set aside or varied and not just a mere technicality
C that can be ignored. Before us, on the facts and evidence, we find that there was a blatant and flagrant disobedience of the order of the Federal Court.

[63] Despite having exhausted all the avenues to appeal their case, the respondents were recalcitrant by insisting on litigating by filing the applications for review as well as for the stay. From the time the Federal
D Court order was granted until the first review application was filed, one year two months had lapsed followed by the filing of the second and third review applications. It is apparent to us that the respondents have unabashedly refused to comply with the High Court order affirmed and reinstated by this court. The non-compliance of a court order, and in this case an injunction,
E is a serious matter. Such behaviour to our mind, showcased total disregard and disrespect of the order granted by the Federal Court which tantamount to clear contempt of this court's order.

[64] With regard to HK, we are mindful that an allegation of contempt against an advocate and solicitor is a serious matter. HK is not a novice but
F an experienced advocate and solicitor with more than twenty years of litigation experience under his belt. When he was engaged, the 60 days to comply as ordered by this court had expired. By accepting the brief, HK would have been aware at all material times of the Federal Court order and the terms of the mandatory injunction. Nevertheless, HK filed the second
G review application followed by the third review application as well as the stay of the committal in the High Court. HK's justification for filing the applications for review and stay is just this, that under the law, on behalf of his client he can file the review applications as well as the stay application. We agree that he can do so. However, the circumstances and the facts of this case are not that simple or straightforward. There is a specific order to
H comply with the FC order which had lapsed when the application to stay the committal was filed in the High Court as well as the second and third review applications were pending in the Federal Court. No application was filed to stay the Federal Court order.

I

[65] As an advocate, HK's main and primary duty as officer of the court is to ensure the rules of court are observed, and to respect the court and the court's order. Section 35(1) LPA does not protect lawyers from contempt. It merely deals with the right to appear and plead in courts in Malaysia.

[66] HK's affidavits are devoid of any reason or explanation of whether he had advised his clients to comply with the Federal Court order and the reason for non-compliance and, despite the advice given by him, they had instructed him to proceed with filing the review applications and the stay application.

[67] Anuar bin Dato' Zainal Abidin J (as he then was) in *MBf Holdings Bhd & Anor v. Houng Hai Kong & Ors* [1994] 4 CLJ 1002 emphasised the duties and responsibilities of an advocate and solicitor:

> As a member of the Bar he is also an officer of the Court. He has an onerous duty as an advocate and solicitor to see that justice is upheld. At the same time as an officer of the Court he has a duty towards the Court. Indeed his duty to the Court is most important. It is his duty to protect the dignity of Court. It is therefore expected of him to show respect for the administration of justice.

[68] His Lordship further said:

> As a member of the Bar he should have shown greater respect for an order of Court. On the contrary he had blatantly challenged the validity of the order. The defendant obtrusively defied the power of the Court and therefore has committed contumelious conduct against the order of Court.
>
> … He has completely brushed aside the order of Court. He manipulated and schemed an action to suit his own purpose ignoring the supremacy of the order of Court.

[69] Lord Goddard through his judgment in *Parashuram Detaram Shamdasani v. King-Emperor* [1945] AC 264, 270 observed:

> Their Lordships would once again emphasise what has often been said before, that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised, and to use it to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended.

[70] In conclusion, for the reasons we have given above, we are satisfied that contempt of court has been proved beyond reasonable doubt against the respondents and HK for intentional disobedience of the Federal Court.

[71] We are therefore, of the view that such conduct and behaviour of the respondents and HK were contumacious and disrespectful. In the circumstances of this case, we are satisfied beyond reasonable doubt that the respondents and HK are guilty of contempt of court.